IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

WP(C).No. 1765 of 2007(I)

PETITIONER:

KAVITHA TRADING CO.
THALIKKAVU, KANNUR 670 001,
REPRESENTED BY ITS MANAGING PARTNER

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS:
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1. **THE ASSISTANT COMMISSIONER (KGST),**
   SPECIAL CIRCLE,
   KANNUR.

2. **THE DEPUTY COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES,
   KOZHIKODE.

BY GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN, J.

W.P.(C) NO. 1765 OF 2007

Dated this the 16th day of January, 2007

J U D G M E N T

As against Exhibit P1 assessment order for the assessment year 2001-02, petitioner preferred appeal and a stay petition. Exhibit P5 is the order passed in the stay application granting a stay in favour of the petitioner, on condition to pay 40% of the balance tax due. Petitioner has produced Exhibit P6 to show that he has complied with the interim order passed in Exhibit P5. While the matter was pending in appeal, the assessing officer has passed an order of rectification as evidenced by Exhibit P8. The petitioner has challenged the same by filing Exhibit P9 along with Exhibit P10 stay application. In the meanwhile, demands have been raised against the petitioner by the assessing officer as evidenced by Exhibits P11 and P12. As far as Exhibit P12 is concerned, that is the amount due as per Exhibit P1 in respect of which the petitioner has already been granted a stay as stated above. As such the present demand ignoring the stay order passed by the appellate authority and without taking into

consideration of the compliance of the order as per Exhibit P6 is illegal. Since Exhibits P2 and P2(a) demand is already stayed by the appellate authority and so long as stay continues, a fresh demand could not have been raised as per Exhibit P12. On this limited ground, Exhibit P12 will stand quashed and therefore demand could be raised subject to the order to be passed in the appeal already pending.

2. As regards the demand Exhibit P11 is concerned it is based on the rectification order Exhibit P8. Petitioner has preferred an appeal and the stay application Exhibits P9 and P10.

3. In the circumstances, there will be a direction that if the petitioner pays 40% as against Exhibit P11 demand within a period of three weeks, further proceedings pursuant to Exhibit P11 will stand stayed until Exhibit P9 appeal is disposed of by the appellate authority. There will be a further direction that both the appeals are to be heard together and disposed of.

Writ petition is disposed of as above.

P.R.RAMAN, JUDGE

Rp